ERIC J. HEIMANN
Wyoming State Bar No. 6-4504
Assistant United States Attorney
District of Wyoming
P.O. Box 668, Cheyenne, WY 82001
(307) 772-2124
eric.heimann@usdoj.gov

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA, Plaintiff, **v.** **RANDY MILLER,** Defendant.	**Case No. 15-CR-239-F** **NON-PUBLIC DOCUMENT**

ELEMENTS OF THE CRIMES

Defendant Randy Miller and the United States of America have entered into a plea agreement to resolve the above-entitled matter. (*Plea Agreement*, Doc. 41.) The Defendant is now scheduled to change his plea on Monday, January 30, 2017. The previously filed prosecutor's statement failed to include the elements of the charged crimes. Therefore, the United States, by and through Eric Heimann, Assistant United States Attorney for the District of Wyoming, respectfully submits this statement of the elements.

The Defendant has agreed to plead guilty to Counts Three and Four of the superseding indictment. Count Three alleges *Misuse of a Social Security Number*, in violation of 42 U.S.C. § 408(a)(7)(B). The elements of this crime are: on or about the date charged in the indictment, "**(1)** for any purpose, **(2)** with intent to deceive, **(3)** [the defendant] represented a particular social security account number to be his or another person's, **(4)** which representation was false.” United States v. Darrell, 828 F.2d 644, 647 (10th Cir. 1987).

Count Four alleges *Aggravated Identity Theft*, in violation of 18 U.S.C. 1028A(a)(1). The elements of this crime are: on or about the date charged in the indictment, **(1)** the defendant knowingly used without legal authority a means of identification of another person; **(2)** the defendant knew that the means of identification belonged to a real person; and **(3)** the defendant did so during and in relation to a misuse of a Social Security Number as charged in Count Three. Model Crim. Jury Instr. 9th Cir. 8.83 (2010); *see* Pattern Crim. Jury Instr. 11th Cir. OI 40.3 (2010) (same concepts but includes separate “without lawful authority” element); Fed. Crim. Jury Instr. 7th Cir. 1028A[1] (2013 ed.) (same basic elements but separates components of the first element and requires proof that defendant committed related felony); *c.f.* Pattern Crim. Jury Instr. 10th Cir. 2.45 (2011) (pattern instructions for 18 U.S.C. § 924(c) require proof that “the defendant used or carried a firearm . . . during and in relation to” specific crime of violence or drug trafficking crime.

DATED this 30th day of January, 2017.

CHRISTOPHER A. CROFTS
United States Attorney

By: ____*/s/ Eric Heimann*___________
ERIC J. HEIMANN
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 2017, a true and correct copy of the foregoing was electronically filed and consequently served upon defense counsel of record.

/s/ Vicki Powell
United States Attorney's Office